

# Montana Code Annotated 2009

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**75-5-313. Temporary nutrient criteria.** (1) The department may, on a case-by-case basis, approve the use of temporary nutrient criteria in a discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts or the limits of technology.

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within Montana and may also consider relevant guidance of the United States environmental protection agency pertaining to analysis of economic impacts from water quality standards.

(b) In the event that economic impacts do not justify temporary nutrient criteria for a particular discharger, the department may approve temporary nutrient criteria based upon a finding that the limits of technology preclude the attainment of the base numeric nutrient standards. The department's determination that the limits of technology justify temporary nutrient criteria must be based on available and proven treatment technologies at the time the temporary nutrient criteria are approved.

(c) The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards or criteria to the board and shall continue to consult with the nutrient work group in implementing temporary nutrient criteria.

(3) The department shall review each application for temporary nutrient criteria on a case-by-case basis to determine if there are reasonable alternatives, such as trading or permit compliance schedules, that preclude the need for the temporary criteria.

(4) (a) Temporary nutrient criteria approved by the department become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(b) Temporary nutrient criteria may be established for a period not to exceed 20 years and must be reviewed by the department every 5 years from the date of adoption to ensure that the justification for their adoption is still valid.

(c) On or before July 1 of each year, the department, in consultation with the nutrient work group, shall report to the environmental quality council by providing a summary of the status of the base numeric nutrient standards, temporary nutrient criteria, and implementation of those criteria, including estimated economic impacts.

(d) On or before September 1 of each year preceding the convening of a regular session of the legislature, the department, in consultation with the nutrient work group, shall summarize the previous two reports provided in subsection (4)(c) to the environmental quality council in accordance with [5-11-210](#).

**History:** En. Sec. 2, Ch. 267, L. 2009.